United Nations AT/DEC/1175

Administrative Tribunal

Distr.: Limited
30 September 2004

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1175

Case No. 1267: IKEGAME Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Ms. Jacqueline R. Scott; Mr. Dayendra Sena Wijewardane;

Whereas, on 15 August 2002, Mieko Ikegame, a staff member of the United Nations, filed an Application containing pleas which read as follows:

"II. Pleas

7. With respect to competence and procedure, the Applicant respectfully requests the Tribunal:

...

(c) *to decide* to hold oral proceedings ..;

8. On the merits ...:

(a) *to rescind* the decision of the Secretary-General imposing the disciplinary penalty of demotion by two levels to the P-4 level and written censure on the Applicant;

(b) *to order* that the Applicant be immediately reinstated to the D-1 level at the appropriate step with effect from 25 June 2002 and that the written censure and other adverse material concerning this matter be removed from her file;

(c) *to find and rule* that the majority opinion of the Joint Disciplinary Committee [(JDC)] erred in matters of law and fact in reaching its conclusions;

(d) *to find and rule* that the Respondent violated the Applicant's rights by placing her on suspension with pay and maintaining her in that status for an unreasonable period of time (13 months) and that she should therefore be

compensated for the violation of her rights under the Staff Rules [and] Regulations;

(e) *to award* the Applicant appropriate and adequate compensation to be determined by the Tribunal for the actual, consequential and moral damages suffered by the Applicant as a result of the Respondent's actions or lack thereof;

(f) *to fix* pursuant to Article 9, paragraph 1 of the Statute and Rules, the amount of compensation to be paid in lieu of specific performance at five years' net base pay in view of the special circumstances of the case;

(g) *to award* the Applicant as cost, the sum of $10,000.00 in legal fees and $500.00 in expenses and disbursements."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 6 December 2002 and periodically thereafter until 30 June 2003;

Whereas the Respondent filed his Answer on 18 June 2003;

Whereas the Applicant filed Written Observations on 6 August 2003, and the Respondent commented thereon on 22 August 2003;

Whereas the Applicant submitted an additional communication on 19 September 2003;

Whereas, on 13 May 2004, the Tribunal requested information from the Respondent, who responded on 4 June;

Whereas, on 25 June 2004, the Tribunal decided not to hold oral proceedings in the case;

Whereas the Applicant submitted an additional communication on 29 June 2004;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 1 August 1995, as an Economic Affairs Officer, Department of Policy Coordination and Sustainable Development, at the P-5 level with a permanent contract. She had previously worked for several years for the Food and Agriculture Organization (FAO) and then the World Food Programme (WFP), and had served on inter-agency loan to the United Nations.

On 1 June 1999, the Applicant was seconded to a D-1 level post with FAO in Rome for two years.

On 16 February 2001, FAO, wrote to the Applicant regarding an investigation which had been conducted into her claim for rental subsidy. She was advised that her actions constituted unsatisfactory conduct under paragraphs 330.151 and 330.152 of the FAO Administrative Manual, and that her dismissal for misconduct was being proposed to the Director-General. On 19 February, the Applicant was advised that the charges of misconduct had been reviewed and were deemed commensurate with the disciplinary measure of dismissal. She was asked to reply to the charges. On 28 February, the Applicant denied all charges of misconduct. Thereafter, she was asked to explain various discrepancies in her statements with respect to a specific cheque made out to a third party (BCI No. 866664). The Applicant responded that she had initially issued cheque BCI No. 866661 to her real estate agency and had attached it to her claim for reimbursement of the agency fee. Her landlord subsequently returned that cheque to her and she provided him with a second cheque (BCI No. 866664), which may have been "blank". When the Applicant received the cancelled cheque (BCI No. 866664), "[she] realised that the [cheque] had been cashed directly by [the landlord], and assumed that he had paid in cash the agency fee to the employee [of the real estate agency]". The Applicant explained:

> "I thought that I should give Audit a photocopy of the [cheque] under the name of the employee, knowing well that such a document could not in any event be qualified for my entitlement. This action was probably wrong, but I did it in good faith without realizing the importance of this matter as in my mind the matter had been closed for a long time and it had no financial implications to [FAO]".

On 4 March 2001, the Applicant was promoted to the D-1 level post of Chief, Governance and Public Administration Branch, Division of Public Economics and Public Administration, Department of Economic and Social Affairs (DESA), with effect from 1 June 2001.

On 18 May 2001, FAO informed the Applicant that she had been found to have committed specified instances of misconduct, and certain amounts paid to her as rental subsidy would be recovered by FAO, but that

> "the Director-General [had] considered, given [her] imminent return to the UN, that the purpose of protecting [FAO] by way of disciplinary action was no longer at issue [...,] and [had] decided that the instances of misconduct ... should be reported to [the United Nations] in accordance with standing

> procedure (Article 7 of the Inter-Organization Agreement concerning Transfers, [sic] Secondment or Loan of Staff, ...)".

On 24 May 2001, FAO advised the Assistant Secretary-General for Human Resources Management, that the Applicant would return to New York upon the completion of her secondment to take up her new duties. Attached to this memorandum were "Administrative Details" that outlined FAO's appraisal of the performance and conduct of the Applicant during her secondment. According thereto, FAO had initiated disciplinary proceedings against her following an internal investigation, and instances of misconduct on her part had been established. In light of the Applicant's return to the United Nations, FAO had decided that disciplinary action "was no longer at issue". Insofar as the instant Application is concerned, it was stated that:

> [The Applicant] had claimed under the rental subsidy scheme the reimbursement of refurbishing costs disguised as normal rental payments, purportedly paid to her landlord under her lease agreement. ...
>
> [The Applicant] had attempted to mislead AUD officers in the course of their investigation. More specifically, she had admitted to falsifying the photocopy of a cheque ... that had been given to the auditors as evidence of a payment she had alleged to have made to the rental agency, by altering the name of the payee on the cheque to make it appear that it had been paid to the rental agency. It had also been ascertained that she had given different versions of events to AUD officers in connection with the rental agency fee she allegedly paid on her lease (Lit. 4 million), although this was denied by the rental agency itself. ...

On 31 May 2001, the Applicant provided the following explanation of her actions to the Assistant Secretary-General for Human Resources Management:

> "As regards the [cheque] of Lit. 4 million, I would note that I did not recall exactly to whom I had made out the [cheque] intended for the rental agency as I was in the midst of contract negotiations and had been given conflicting advice, apparently to facilitate the transaction, probably for tax purposes. If I have given conflicting versions of the events, it was simply due to my lack of recollection. I changed the name on the [cheque] at a later stage as I felt under pressure from the audit office and just wanted to close the file after I had reimbursed the amount. Of course, I realize that I made a major mistake which I deeply regret and offered my apologies to the FAO audit."

On 1 June 2001, the Applicant took up the D-1 level position with DESA. On 4 June, however, OHRM advised her that, "in view of the nature and the gravity of the

matter," she had been placed on suspension from duty with full pay, with immediate effect, pending completion of disciplinary proceedings. The Applicant was invited to comment on the FAO allegations that she had committed rental subsidy fraud and had falsified the photocopy of a cheque in an effort to conceal her actions and mislead investigating officers. The Applicant responded on procedural grounds on 18 June, professing "great surprise" at her suspension, which she considered violated ST/AI/371, "Revised Disciplinary Measures and Procedures", of 2 August 1991. She noted that FAO had conducted proceedings against her and had decided not to impose disciplinary action, and argued that disciplinary proceedings at the United Nations would amount to double jeopardy, and would be prejudicial to her appeal at FAO. Thereafter, the Applicant responded on the substance of the allegations on 16 July.

On 10 August 2001, the Applicant wrote to the Director-General of FAO, contesting "both the substance of the allegations and the form of actions taken by the Director of Personnel in reporting [her alleged misconduct] to the United Nations".

On 19 September 2001, the JDC in New York was informed that it appeared that the Applicant had engaged in rental subsidy fraud and had submitted an altered photocopy of a cheque to FAO, and was asked to advise as to what disciplinary measures, if any, should be imposed upon her.

On 22 April 2002, the JDC submitted its report. The conclusions and recommendation of the majority of the panel read as follows:

> "89. With respect to the procedural issues, the majority Members of the Panel were of the opinion that the JDC in New York was not a proper forum for the present case. Nevertheless, the Panel decided to review the case because of the obvious need to bring to closure an unsustainable situation of a senior staff member being suspended with full pay for a prolonged period of time. They were of the view that, rather than a form of double jeopardy, the present disciplinary proceedings conducted in full respect of due process and rights of the staff member, offered in fact a double protection for [the Applicant]. The majority Members of the Panel felt that the administrative measure of suspension from duty imposed on [the Applicant] was unwarranted.
>
> 90 The majority Members of the Panel considered that they were in no position to address the veracity of FAO's allegations against [the Applicant] or the relevant investigative findings, nor to evaluate the appropriateness of FAO's decision not to take, upon the establishment of misconduct, any disciplinary actions against [the Applicant]. However, they believed that in transmitting the Administrative Details to the United Nations and not making them available, at the same time, to [the Applicant], the FAO Administration has violated the staff member's rights to due process.

91 On substance, the majority Members of the Panel concluded that the Administration had failed to substantiate its charge of rental subsidy fraud with adequate evidence. On the second charge of falsification of the copy of a cancelled [cheque], they determined that [the Applicant's] free and uncoerced admission of taking an intentional and affirmative action of altering both sides of the cancelled [cheque] and submitting it as an official document in the context of rental subsidy claim constituted adequate evidence in support of the Administration's allegation of misconduct. The majority Members of the Panel determined that [the Applicant] had failed to carry the shifted burden to provide proper explanation or evidence in her own defense. Consequently, the second charge of misconduct must be allowed to stand.

92 In view of the serious nature of the misconduct of falsifying a document to be used for official purpose, which constituted a serious failure on [the Applicant's] part to comply with the obligations under the United Nations Charter and to observe the standards of conduct expected of an international civil servant, the majority Members of the Panel *recommend* that, effective immediately, [the Applicant] be removed from her D-1 post ... and be demoted by two levels to the P-4 level. They *also recommend* that a written censure by the Secretary-General be issued to [the Applicant] and be placed as a permanent record in her Official Status file.

93 Recalling the serious constraints and handicaps in the way of the Panel's fact-finding mandate, the FAO Administration's less than cooperative attitude towards the Panel bordering on obstruction of justice, [the Applicant's] allegations of impropriety and procedural irregularities on the part of the FAO Administration and also taking note of her ongoing appeal before FAO, the majority Members of the Panel *further recommend* that the Secretary-General invite the FAO Administration to undertake, in the framework of [the Applicant's] appeal, a thorough review of the case in all its aspects and that the Secretary-General reserve the right to review the status of [the Applicant] in light of the outcome of that ... review.

94 The majority Members of the Panel make no other recommendation in respect of the present case."

The opinion of the dissenting member of the panel read, in part, as follows:

"... **Introduction**

... [The majority] reached their conclusion and are now submitting their recommendation without full knowledge of all aspects of the case.

...

... [One] member of the Panel has been in a position of conflict of interest on two counts ...

... The established practice of the JDC on the 'shifting of the burden of proof' to the defendant is not properly followed in the Majority Report ...

... [T]he right of the defendant to due process was violated by OHRM and the Secretariat of the JAB/JDC who both refused to allow for the process of information gathering to proceed without hindrance ... The difficulty and the

too long delays ... imposed unnecessary time constraints on work of the Panel

...

...

... Recommendation

... I recommend, with all due respect, that the Secretary-General decide that, with immediate effect, the suspension of the defendant be lifted and that proper action be taken to secure the submission by FAO Administration of all documentary evidence and information relevant to this case. In view of the experience gained through the proceedings of the JDC Panel, such action should be undertaken through the Office of the FAO Director General ... When the necessary light has been shed on all aspects of this case, the Secretary-General will decide whether the disciplinary proceedings should resume or not. Meanwhile, the Secretary-General, if he deems it necessary, may decide to suspend the implementation of the defendant's promotion to [the] D1 level and have her only act as Officer-In-Charge of the post she is currently encumbering. It is however important to point out here that the defendant; while under investigation at FAO, not only was not suspended, but was also entrusted with added responsibilities."

On 25 June 2002, the Under Secretary-General for Management transmitted a copy of the JDC report to the Applicant and informed her as follows:

"The Secretary-General has given careful consideration to, and has decided to accept the findings and conclusions of the majority of the JDC with respect to the two charges. He agrees that your conduct fell short of the standard of conduct expected of an international civil servant and amounts to serious misconduct within the meaning of Staff Rule 110.1, warranting disciplinary action. In accordance with the majority's recommendation, and pursuant to Staff Rule 110.3 (a) (i) and (vi), the Secretary-General has decided to demote you to the P-4 level with effect from the date of this letter, and to impose upon you a written censure for your misconduct.

Accordingly, this letter is being addressed to you as an expression of the strongest disapproval for your misconduct and is also to serve as a warning that any recurrence of such behavior will not be tolerated. A copy of this letter will be permanently placed in your official status file. Having regard to the majority's last recommendation, that the Secretary-General 'invite the FAO Administration to undertake, in the framework of [your] appeal, a thorough review of the case in all its aspects and that the Secretary-General reserve the right to review [your] status in light of the outcome of the FAO's review,' the Secretary-General considers that possible proceedings before the FAO are a separate matter. The Secretary-General's decision rests on the findings of the JDC and the record of the case before the [United Nations]. It stands on its own. The Secretary-General therefore declines to adopt the last recommendation of the JDC majority."

On 15 August 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The imposition of disciplinary measures was not warranted.

2. The Organization did not act in good faith towards the Applicant.

3. The Applicant is entitled to compensation for the unnecessary stress and mental anxiety to which she was subjected, as well as the serious damage to her professional reputation.

Whereas the Respondent's principal contentions are:

1. The Applicant failed to meet the standards of conduct required of international civil servants.

2. The JDC proceedings and the subsequent disciplinary measures imposed on the Applicant constituted a proper exercise of the Respondent's authority.

3. The JDC proceedings fully respected the Applicant's due process rights.

4. The Applicant's request for the award of costs and moral damages is without merit.

The Tribunal, having deliberated from 25 June to 23 July 2004, now pronounces the following Judgement:

I. The Applicant challenges a decision of the Secretary-General, pursuant to a majority recommendation of the JDC, to demote her by two levels, both on substantive and procedural bases. The Applicant alleges that her rights to due process were denied by virtue of the many procedural irregularities. She also disputes the merits of the decision to demote her. The Tribunal will first address the alleged procedural irregularities and then the substance of the Applicant's claims.

II. The Tribunal first addresses related issues of *forum non conveniens* and the authority of the United Nations to investigate allegations of the Applicant's misconduct while at FAO and to take disciplinary measures with respect to such misconduct.

III. On the issue of *forum non conveniens*, the Tribunal agrees with the JDC that New York may not have been the most convenient *forum* for resolution of the Applicant's claims, because of lack of nexus and because of inconvenience and difficulty in obtaining relevant background information, witness testimony and evidence. However, the decision to select New York as the *forum* should not have been a surprise to the Applicant as she had returned to Headquarters, and the Tribunal finds that New York was the reasonable and logical *forum*.

IV. Also, the Applicant's arguments that Rome was the only appropriate and convenient *forum* for addressing allegations of misconduct stemming from her rental of the apartment in Italy is misplaced. Pursuant to article 7(a) of the Inter-Agency Agreement

> "[w]hen a seconded staff member returns to the releasing organization the receiving organization will provide the releasing organization with a statement showing: ... (iv) an appraisal of the performance and conduct of the staff member during his secondment".

Accordingly, when the Applicant returned to the United Nations at the completion of her secondment, FAO provided "Administrative Details" containing such information to the United Nations. Included in that information were details about the misconduct in which the Applicant was found to have engaged. Upon his receipt of such information, the Respondent was obligated to investigate the charges. This is in keeping with Article 101, paragraph 1 of the United Nations Charter, which obliges the Secretary-General to "employ staff of the highest integrity". This was, as the Respondent noted in his Answer, of particular importance with respect to a staff member who was about to be promoted to the D-1 level of service.

V. The disciplinary hearings conducted by the JDC were proper and in keeping with the Inter-Agency Agreement. Although the Tribunal notes that the Inter-Agency Agreement does not specifically address the facts of the instant case, *i.e.*, where the receiving organization concludes that misconduct has occurred but does not summarily dismiss the employee, the JDC's analogy to paragraph 9(b) of the Inter-Agency Agreement is convincing. Pursuant to paragraph 9(b), if the receiving organization summarily dismisses the staff member (presumably before the contractual arrangement has concluded), the releasing organization can investigate the matter itself and reach its

own conclusion as to whether the circumstances warrant a similar termination from the releasing organization. If not, the staff member's rights under the releasing organization will continue, notwithstanding that the staff member has been summarily dismissed from the receiving organization. Although paragraph 9(b) is not directly on point, its rationale can be applied to the instant matter. By analogy, if FAO did not summarily dismiss the Applicant, because, as it stated in the above-referenced Administrative Details, the Applicant was about to return to the United Nations, the Administration, upon learning of the circumstances of the FAO decision, should be able to independently investigate the circumstances to determine whether the Applicant's conduct warrants a termination from the United Nations or some other less severe disciplinary measure. This is exactly what the Administration did, and the Tribunal finds that it was in keeping with the spirit of the Inter-Agency Agreement.

VI. Furthermore, although the Applicant asserts that the JDC had a duty to suspend its proceedings pending resolution of the FAO matter, no such duty exists. As the JDC correctly concluded, "[t]here is no provision in the [United Nations] Staff Rules that require[s] the JDC Panel to suspend its disciplinary proceedings during the pendency of [the Applicant's] appeal before the FAO".

VII. On the issue of double jeopardy, the Tribunal concurs with the JDC that the concept of double jeopardy does not apply. In conducting its investigation, the JDC sought information from FAO with respect to the alleged misconduct and the conclusions reached by FAO in that regard. Unfortunately, FAO was less than cooperative in providing information and merely provided excerpts from a report it had issued as a result of its investigation. While the Tribunal recognizes that information provided by FAO might have been helpful, it concludes that in light of the Applicant's admissions of forgery and the Inter-Agency Agreement, such information was not necessary to the United Nations' investigation of the misconduct or to the United Nations' imposition of disciplinary measures upon the Applicant, the Organization having an independent obligation to investigate and address the alleged misconduct. Therefore, the JDC was not bound in any fashion by the FAO proceedings. By conducting an independent investigation, the JDC ensured that a determination of misconduct would be made under the relevant framework of the United Nations' rules and regulations, not those of FAO. Of greatest significance, though, are the Applicant's admissions of forgery. In light of these admissions, the FAO proceedings

were irrelevant. Therefore, the Tribunal finds that in this case, where no disciplinary measures were imposed upon the Applicant by FAO and where the Applicant's conduct was expressly left to be dealt with by the United Nations, the concept of double jeopardy does not apply. "A different question might have arisen had the complaint been resolved in favour of the Applicant and had the Administration then sought to have it investigated yet again". See Judgement No. 1066, *Ragan* (2002), para. V.

VIII. In keeping with the Tribunal's conclusions that FAO and United Nations' authority are separate and distinct, the Tribunal finds that FAO's alleged failure to provide the Applicant with a copy of the Administrative Details at the same time that FAO provided same to the United Nations, is not a matter properly before the Tribunal. Article 11 of the Inter-Agency Agreement specifically provides:

> "Appeals against administrative decisions taken before or after a transfer, or during a period of secondment or loan, will be heard by the appropriate appeals body of the organization which took the decision appealed against, and be dealt with under the regulations and rules of that organization."

Whether FAO violated the Applicant's rights to due process is not something about, or over, which the United Nations has any knowledge, authority or control, and it cannot be held responsible for the actions of another independent organization.

IX. The Tribunal now turns its attention to the issue of whether the Respondent's suspension of the Applicant with full pay violated her rights to due process. Staff rule 110.2 sets forth the rules applicable to suspension of a staff member for misconduct. Staff rule 110.2 provides:

> "*Suspension during investigation and disciplinary proceedings*
>
> (a) If a charge of misconduct is made against a staff member and the Secretary-General so decides, the staff member may be suspended from duty during the investigation and pending completion of disciplinary proceedings for a period which should normally not exceed three months. Such suspension shall be with pay unless, in exceptional circumstances, the Secretary-General decides that suspension without pay is appropriate. The suspension shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.
>
> (b) A staff member suspended pursuant to paragraph (a) shall be given a written statement of the reason for the suspension and its probable duration.

(c) If a suspension pursuant to paragraph (a) is without pay and the charge of misconduct is subsequently not sustained, any salary withheld shall be restored."

Administrative instruction ST/AI/371, dated 2 August 1991, further provides that

"as a general principle, suspension may be contemplated if the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible".

X. The Tribunal disagrees with the JDC's conclusion that the suspension of the Applicant was unwarranted. The Tribunal notes that at the time of the suspension, the Applicant had already admitted her alteration of cheque BCI No. 866664. This was reason enough for the Respondent to be concerned about allowing the Applicant to encumber the D-1 post to which she had recently been promoted, as the Applicant would be in a position of leadership and responsibility. In that position, her admitted forgery was sufficient reason to have shaken the Respondent's confidence in her ability to comport herself with the honesty and integrity expected of all United Nations staff members and particularly of such a high ranking staff member. Although the Tribunal notes that while the 13 month suspension was significantly longer than the three months normally intended under staff rule 110.2, the Applicant suffered no financial harm as a result. While the Tribunal recognizes that the Applicant may have been stigmatized by such a lengthy suspension, it notes that her improper conduct – the alteration of the cheque, which she admits – was the basis for the suspension, and having chosen to alter the cheque in violation of the United Nations standards, rules and regulations, the Applicant cannot be heard to complain about the foreseeable consequences, which included suspension.

XI. The Tribunal now turns to the issue of the constitution of the JDC. The Applicant alleges that she was not notified of the members of the JDC panel until she arrived at the hearing. At that hearing, the Applicant's counsel challenged the presence of one of the JDC members, Mr. K. The Respondent does not refute this allegation, and the Tribunal finds that the failure to notify her constituted a denial of the Applicant's rights to due process. Had the Applicant been so advised in a timely fashion, she could have submitted a formal and more substantive objection. The

Respondent's failure to notify her properly denied her this right to object. The Applicant is entitled to compensation in this regard.

The Applicant also alleges a conflict of interest in violation of her rights to due process, again arising from the presence of Mr. K. on the JDC. The Applicant asserts two bases in support of her argument that Mr. K. should have recused himself from the proceedings because of the conflict of interest his presence created. First, the Applicant asserts that Mr. K. should have recused himself from the JDC because he had considered another case in which the Applicant's counsel was a party. Second, the Applicant asserts that a conflict of interest arose, because Mr. K., who at that time held a position in DESA more junior than the Applicant's position, had a direct economic/financial interest in the Applicant being demoted to a position less senior than his.

XII. The Tribunal agrees that the presence of Mr. K. indeed created a conflict of interest. While in most circumstances, the Tribunal might not be troubled by the previous dealings between Mr. K. and the Applicant's counsel, the Tribunal is persuaded in this case that Mr. K.'s behaviour and comportment evidenced a lack of impartiality to the Applicant's counsel, which might have, in turn, resulted in a lack of impartiality toward the Applicant. More significantly, however, is the economic/employment interest of Mr. K. in the Applicant's demotion. If the JDC had recommended that the Applicant be demoted only one level, she and Mr. K. would have been on equal footing. By her demotion to one level below him, he now was senior to her. Also, the D-1 post from which she was demoted now was vacant. While Mr. K. may have been pure of heart and may have harboured no self interest in the outcome of the Applicant's case, his presence, at a minimum, created the appearance of impropriety. The Tribunal has previously expressed concern that the Administration's joint bodies maintain an impeccable level of impartiality and fairness, and the inclusion on the panel of a JDC of someone who at best appears to lack impartiality and be self-interested diminishes the entire JDC process and undermines any recommendation made by such JDC. (See Judgement No. 1117, *Kirudja* (2003).) The Tribunal cautions the JDC to be mindful of the great danger of even apparent impropriety. For this, the Tribunal finds that the Applicant is entitled to be compensated.

XIII. Under circumstances such as these, where there was both a perceived and a real conflict of interest, the Tribunal ordinarily would be justified in dismissing the entire case against the Applicant, because of the tainted proceedings. However, in this case, where the Applicant has admitted her wrongdoing, the Tribunal finds that the conclusion reached by the majority was reasonable, if not inevitable.

XIV. Staff regulation 1.2(b) sets forth the standards to which staff members must conform their conduct:

> "Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status".

Staff rule 101.2(g) addresses the standards of conduct specifically with respect to the alteration of official documents:

> "Staff members shall not intentionally alter, destroy, misplace or render useless any official document, record or file entrusted to them by virtue of their functions, which document, record or file is intended to be kept as part of the records of the Organization".

XV. The Applicant has admitted that she altered a cancelled cheque that was submitted by her for official purposes. Although she later explained the reasons for her alteration, she does not deny the alteration, and the Tribunal finds her explanations implausible. To have left the cheque unaltered and to have appended an explanation to it when sending it to the Administration would have been an obvious path to have taken, had her motives been entirely above-board and innocent. The Applicant is a staff member with over twenty years of experience, who having reached the upper echelon of service, is expected to comport herself in accordance with the highest standards of honesty, morality, and integrity. Alteration of the cheque in question was a serious breach of her duty to "comply with her obligations under the United Nations Charter and to observe the standards of conduct expected of an international civil servant", and the Respondent was entitled to view it as such. Thus, the Tribunal concludes that the admitted alteration of the cheque in question constitutes misconduct of such nature as to reasonably warrant the Applicant's demotion by two levels. The Tribunal also notes that had the Respondent decided to dismiss the Applicant, such

disciplinary measure also would have been found by the Tribunal to be proportional to the misconduct.

XVI. In view of the foregoing, the Tribunal:

1. Awards the Applicant $4,500 for the denial of her rights to due process because of procedural irregularities by the JDC; and

2. Rejects all other pleas.

(Signatures)

Kevin **Haugh**
Vice-President, presiding

Jacqueline R. **Scott**
Member

Dayendra Sena **Wijewardane**
Member

Geneva, 23 July 2004

Maritza **Struyvenberg**
Executive Secretary